

**Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554**

In the Matter of)	
)	
Impact of Middle and Second Mile Access)	GN Docket No. 09-47
on Broadband Availability and Deployment:)	
NBP Public Notice #11)	
)	
A National Broadband Plan for Our Future)	GN Docket No. 09-51
)	
Inquiry Concerning the Deployment of)	GN Docket No. 09-137
Advanced Telecommunications Capability)	
to All Americans in a Reasonable and)	
Timely Fashion, and Possible Steps to)	
Accelerate Such Deployment Pursuant to)	
Section 706 of the Telecommunications Act)	
of 1996, as Amended by the Broadband)	
Data Improvement Act)	

COMMENTS OF SPRINT NEXTEL CORPORATION – NBP PUBLIC NOTICE # 11

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EXECUTIVE SUMMARY

Sprint applauds the Commission's focus on the impact of middle and second mile access on the deployment of broadband in the United States. Just as increased broadband deployment is critical to the future of the U.S. economy, so too is reasonable access to middle mile and second mile facilities critical to the availability and deployment of broadband. Failure to make these facilities available at reasonable rates, terms and conditions will impede availability and use of broadband services.

Sprint has invested billions of dollars in the wireless and wireline infrastructure needed to provide broadband services, including the deployment of the first 4G mobile broadband network in the United States through Clearwire. Despite these investments, Sprint's deployment of broadband services depends in large part on its ability to obtain key second mile, middle mile and last mile inputs at reasonable rates and on reasonable terms and conditions. In most cases, various of these key inputs are available only from incumbent local exchange carriers (LECs) that take full and largely unrestrained advantage of their market power.

Sprint remains heavily reliant on incumbent LECs for the connections needed to link Sprint's wireless base stations to its fiber rings and mobile switching centers, as well as the connections needed to link its wireline enterprise customers to entrance facilities that reach Sprint's points of presence (POPs). For example, a survey conducted by Sprint in 2007 showed that competitive providers' facilities reached only a little over one percent of over 50,000 cell sites for which Sprint sought competitive alternatives to the incumbent LECs. Overall, Sprint depended on incumbent LECs for more than 96 percent of all DS1 and DS3 last mile and second mile circuits terminating at customer premises or Sprint cell sites located in the top 50 MSAs.

This dependency persists despite Sprint's aggressive efforts to deploy its own facilities where feasible and to rely on competitive providers whenever possible. Given the traffic volumes carried over circuits connecting Sprint's base stations and wireline enterprise customers to the rest of its network, it will not be economic for Sprint to construct its own links to serve those locations in the foreseeable future. And experience shows that high barriers to entry make it unlikely that competitors will be able to serve those locations effectively. *Only the incumbent LECs have the economies of scale and scope, control over rights of way, and the access to buildings needed to serve the vast majority of Sprint's cells sites and wireline enterprise customer locations.*

This lack of competition makes Sprint and other broadband providers captive customers of the incumbent LECs. Due to their dominant position, the incumbent LECs are able to charge excessive rates for their services – far higher than the rates one would expect in a competitive environment, and far in excess of the actual cost (including a reasonable return) of providing those services. The incumbent LECs also exploit their dominance by imposing unjust and unreasonable conditions on Sprint and other customers that depend on the incumbent LECs to provide critical inputs to their broadband services. These unreasonable terms and conditions are designed to preserve the incumbent LECs' monopolies by deterring customers from taking advantage of alternative providers, or even self-provisioning. The unreasonable terms and conditions imposed by the incumbent LECs, combined with the lack of competitive alternatives, effectively lock Sprint into buying key elements of its broadband offerings from the incumbent LECs at supra-competitive prices. As a result, Sprint is forced to pay the incumbent LECs billions of dollars for overpriced services – money that could be used to expand Sprint's own broadband offerings and deploy new broadband technologies. Thus, the incumbent LECs'

monopoly pricing harms consumers and places a drag on the economy as a whole, impeding both deployment and adoption of existing and new broadband services.

Because the market has proven unable to discipline incumbent LEC special access pricing and service practices, the Commission must adopt certain regulatory reforms: re-introducing a productivity adjustment factor in the price cap formula; bringing back under price cap regulation certain special access services that were prematurely deregulated; adopting new pricing flexibility triggers that more realistically reflect the existence of actual and viable competition; and removing onerous and anti-competitive terms and conditions. In the absence of effective market controls, these regulatory reforms are critical to ensuring that special access services are provided at just and reasonable rates, terms and conditions, as required under the Act.

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COMMENTS OF SPRINT NEXTEL CORPORATION – NBP PUBLIC NOTICE #11

Sprint Nextel Corporation (Sprint) submits these comments in response to the *NBP Public Notice #11* issued by the Federal Communications Commission (FCC or Commission) on October 8, 2009 in the above-captioned proceedings, seeking comment on the impact of “middle and second mile access” on broadband availability and deployment.¹

I. INTRODUCTION AND SUMMARY

The increasing importance of broadband availability to virtually every aspect of life in the 21st-century United States is beyond serious debate. Broadband services are becoming critical to a vast and growing array of activities, ranging from health care to

¹ Public Notice, *Comment Sought on Impact of Middle and Second Mile Access on Broadband Availability and Deployment: NBP Public Notice #11*, GN Docket Nos. 09-47, 09-51 and 09-137, DA 09-2186 (rel. Oct. 8, 2009) (Public Notice or *NBP Public Notice #11*).

education, to financial transactions, to public safety. Equally clear is the important role that access to second mile and middle mile, as well as last mile, facilities plays in the availability and deployment of broadband services. As stated in the Public Notice, the provision of broadband services requires “adequate, reasonably priced, and efficiently provided access to both second mile and middle mile connectivity.”² Sprint, for example, has invested billions of dollars in the mobile switching centers, spectrum licenses, towers and other base station facilities that serve its 48 million wireless end users, as well as construction of the first 4G mobile broadband network through the creation of Clearwire. Those facilities, however, require access to transmission facilities that will connect Sprint’s wireless users with its mobile switching centers (MSCs).

Sprint would prefer to own and operate its entire network, if that were possible, and self-provisions as much of its network as is technically and economically feasible. Despite aggressive efforts to optimize its network, Sprint remains heavily dependent on essential services offered by incumbent local exchange carriers (LECs) to link its wireless base stations to fiber rings and MSCs and to connect its wireline enterprise customers to entrance facilities that reach Sprint’s points of presence (POPs). Approximately one-third of Sprint’s total cell site operating costs are devoted to the links needed to connect its base stations to the rest of its network. Given the prohibitive costs of duplicating the ubiquitous networks of the entrenched incumbent LECs, it is highly unlikely that it will be economic for Sprint to construct its own links to reach a significant portion, much less a majority, of its wireless base stations or wireline enterprise customers at any point in

² Public Notice at 2.

the foreseeable future. Sprint lacks the economies of scale and scope enjoyed by the incumbent LECs as well as the advantages the incumbents have gained due to their longstanding monopolies.³

Because Sprint and other service providers lack effective alternatives to the incumbents' offerings for most of their local transmission needs, the incumbent LECs are able to use their dominance in the provision of those services to impose unjust and unreasonable terms and conditions, including excessive rates that greatly exceed costs. These excessive rates have forced Sprint to divert to the incumbent LECs billions of dollars that could have been used to invest in Sprint's own network and services, hampering Sprint's ability to expand its existing broadband offerings and to deploy new broadband technologies on a timely and efficient basis, to the detriment not only of Sprint, but to consumers and to the economy as a whole.

Details about the lack of competition for these essential services, and the attendant problems caused by absence of alternatives to the incumbent LEC offerings, are provided below. Following the organization of the *NBP Public Notice #11*, Sprint discusses:

- The network components of broadband connectivity, including an explanation of how Sprint uses second mile and middle mile access within its network;
- The lack of reasonably priced second mile and middle mile connections, and the impact high-priced access has on Sprint's ability to provide broadband services;

³ See Section IV, *infra*.

- The economics of deployment, including how Sprint decides when it is feasible to self-provision network facilities; and
- The lack of competition to the incumbent LECs for second and middle mile access, and the factors that deter Sprint from availing itself of competitive alternatives even where they might be available.

II. PUBLIC NOTICE QUESTION 1 – NETWORK COMPONENTS OF BROADBAND CONNECTIVITY: SPRINT RELIES HEAVILY ON INCUMBENT LEC-PROVIDED SECOND MILE AND MIDDLE MILE SPECIAL ACCESS SERVICES TO PROVIDE ITS WIRELESS AND WIRELINE ENTERPRISE BROADBAND SERVICES

The network diagrams included in the Public Notice show certain components that connect an end user to the Internet gateway, splitting the “backhaul” piece into three categories: last mile, second mile, and middle mile connectivity. While these diagrams provide a useful starting point for the discussion about the impact of middle and second mile access on broadband availability and deployment, actual network configurations are far more complex than depicted in the Public Notice. In order to give the Commission and other interested parties a better sense of the critical role that special access facilities play in Sprint’s ability to provide broadband service to its wireless and wireline enterprise customers, and to highlight where and why backhaul chokepoints exist, Sprint describes below its common network configurations, including both the network elements which it self-provisions and those which it obtains from incumbents or, in rare circumstances, competitive access providers.⁴

⁴ As used herein, the term “special access” in the wireless context refers to the dedicated transmission links used to transport broadband and other traffic from Sprint’s wireless cell sites to LEC Serving Wire Centers (SWCs), from LEC SWCs to a LEC Central Office (CO) (or other aggregation point) and from the LEC CO to the Sprint MSC, or POP. In the wireline context, the term “special access” refers to the dedicated

Footnote continued on next page

A. Sprint's Wireless Network

Sprint's wireless network includes three technology platforms: iDEN (Integrated Digital Enhanced Network), which provides push-to-talk capability and other voice services; CDMA 1xRTT (single carrier Radio Transmission Technology, or 2.5G) for CDMA voice traffic; and CDMA EvDO (Evolution, Data Optimized) for CDMA data traffic. Sprint's cell sites may support all three platforms, with traffic associated with each platform generally carried from the cell site over individual (almost always DS1) backhaul trunks.⁵ Sprint averages fewer than three DS1 circuits per cell site; in the overwhelming majority of cases – *95 percent of the time* – these DS1 channel terminations are obtained from the incumbent LEC.⁶

Rarely does Sprint require more than two or three DS1 circuits from its cell sites (generally, one for voice and one for data traffic). Mobile traffic (both voice and data) can be packed more compactly on a DS1 trunk than wireline traffic because of

transmission links used to transport broadband traffic from a Sprint wireline enterprise customer premises to the LEC SWC, from the LEC SWC to a LEC aggregation point (*i.e.*, a hub) and from the LEC aggregation point to the Sprint POP. Hence, the term “special access” includes both second mile and middle mile facilities.

⁵ Because 1xRTT, EvDO and iDEN are different technologies and connect to different equipment within the Sprint network, each traffic stream today rides on its assigned DS1 and is not aggregated with traffic on different technological platforms originating from the same cell site.

⁶ See Written Testimony of Paul Schieber, Vice President Access and Roaming, Sprint Nextel Corporation, on an Examination of Competition in the Wireless Industry, Before the House Subcommittee on Communications, Technology and the Internet, May 7, 2009, at 7 (Schieber Testimony), *available at*: <http://energycommerce.house.gov/Press_111/20090507/testimony_schieber.pdf>.

technologies such as vocoding,⁷ because mobile users frequently move from cell site to cell site, and because data applications are “bursty” (allowing for dynamic allocation of the available capacity); thus, under optimal conditions, a single DS1 can accommodate between 70-80 mobile users (as compared to 24 wireline voice customers) simultaneously.

Included in Attachment 1 is a diagram of the standard access configuration on Sprint’s wireless network. As can be seen from this diagram, the DS1 circuit from the cell site generally terminates at an incumbent LEC serving wire center; this portion of the facility is assessed a monthly channel termination fee. Traffic from this serving wire center then is carried to an aggregation point (an incumbent LEC hub or other central office); this portion of the DS1 facility is assessed recurring channel mileage fees. Up to this point, it is rare that traffic volumes are high enough to warrant use of backhaul facilities greater than the DS1 level; it is even rarer that an alternative access vendor will find it economic to deploy dedicated facilities to a cell site that requires only one or two DS1s, particularly if the cell site is distant from the vendor’s existing core network.

At the aggregation point, traffic from multiple serving wire centers is multiplexed up to a larger facility such as a DS3 for transport to a node on a Metropolitan Access Network (MAN) ring. As was the case for the DS1 circuits, incumbent LECs remain by far the dominant providers of these DS3 facilities. Here again, it is rare that an

⁷ Vocoding is a process that uses an algorithm to compress voice data in digital communications systems.

alternative access vendor will find it economic to extend its network in order to provision a single DS3.

A MAN ring connects multiple telecommunications exchange facilities, including a LEC node; a Sprint MSC; a Sprint POP; and, potentially, the facilities of other wireless or wireline carriers as well as enterprise customer sites. To the extent that competition for backhaul services currently exists or is likely to develop, it is for the ring facility. In general, it is only at the level of these high capacity rings that aggregated traffic volumes (from potentially multiple customers) are high enough to justify economically the deployment of alternative transport facilities by a competitive access provider.⁸ In certain geographic markets where there is a sufficiently high volume of traffic and where outside vendor costs reach sufficiently high levels, Sprint will evaluate deployment of its own MAN ring. Sprint currently has a MAN presence (owned and leased facilities) in 148 geographic markets.

A diagram of Sprint's core transport network is included in Attachment 2. As shown in that diagram, traffic on the MAN is routed from the LEC node to a Sprint MSC, and from the Sprint MSC to a Sprint POP. Once the traffic reaches the Sprint POP, it is carried to Sprint's long-distance network via very high capacity facilities (OC12 or higher), and from the Sprint long-distance network the traffic terminates on Sprint's Internet backbone network. Sprint has incurred, and continues to incur, billions of dollars in capital and operating expenses to build and maintain its MAN rings, its wireless networks, its long distance network, and its Internet backbone network.

⁸ MAN rings are OCn facilities, with capacities as high as OC-192.

Even with the expansion of 4G services and the dramatic increase in smartphone use and bandwidth-hungry applications, Sprint expects that it will continue to rely heavily upon DS1 and DS3 facilities to provide backhaul from its cell sites for the foreseeable future. Current data indicates that broadband EvDO users can get upload/download speeds of up to 144/2000 kbps from cell sites served by a DS1; EvDO Rev. A users enjoy speeds of up to 1800/2000 kbps. Sprint's experience with 4G users has shown that it is able to provide an excellent customer experience using DS3 backhaul. Recent surveys confirm the quality, speed and reliability of Sprint's mobile broadband network.⁹ Particularly in rural and low-volume sites, Sprint expects that traffic volumes (including growing broadband demand) will continue to be such that DS1 and DS3 circuits will be adequate for the foreseeable future.

Where feasible, Sprint does use wireless facilities to transport traffic to and from cell sites. In particular, Sprint, as the majority investor in Clearwire, expects to take advantage of Clearwire's state-of-the-art network to the maximum extent possible.¹⁰ This does not mean, however, that Clearwire (or any other wireless backhaul provider) will immediately and completely replace the incumbent LECs as the provider of backhaul

⁹ See, e.g., Mark Sullivan, *A Day in the Life of 3G*, PC WORLD, June 28, 2009, available at: <http://www.pcworld.com/article/167391/a_day_in_the_life_of_3g.html> (citing download speeds as high as 1005 kbps (in Seattle) for Sprint's 3G network); Zach Epstein, *Carrier Wars: Sprint speed test results*, BOY GENIUS REPORT, August 8, 2009, available at: <<http://www.boygeniusreport.com/2009/08/08/carrier-wars-sprint-speed-test-results/>> (reporting Sprint EvDO Rev. A average download speed of 1361 kbps).

¹⁰ Sprint will be reselling Clearwire's 4G WiMAX services on a Mobile Virtual Network Operator (MVNO) basis. Sprint will also be purchasing a limited amount of microwave backhaul service from Clearwire. It is only this latter service that is relevant to the instant comments.

facilities from Sprint's cell sites (much less from the approximately 133,000 premises of Sprint's wireline enterprise customers), for several reasons. First, Sprint can use microwave backhaul only from those sites at which Sprint and the microwave backhaul provider (*e.g.*, Clearwire) are collocated, and these providers obviously are not completely overbuilding the entire Sprint wireless network. Microwave backhaul facilities (particularly new installations that do not extend off existing, nearby plant) are costly to deploy and can be financially justified only where traffic volumes exceed a certain level. Hence, in markets not served by Clearwire or another microwave backhaul provider, Sprint will remain largely (almost entirely) dependent upon the incumbent LEC for backhaul from the cell site.

Second, even in markets in which Clearwire has successfully deployed microwave backhaul facilities, Sprint will not automatically or immediately replace incumbent LEC-provided backhaul with Clearwire-provided backhaul. Clearwire will not be providing unlimited wireless backhaul to Sprint because Clearwire does not have unlimited capacity. Moreover, where Sprint is using Clearwire's Ethernet-based transport services, Sprint will have to install "pseudowire" boxes to convert Ethernet signals to the TDM format used by the base transceiver stations at Sprint's cell sites. Installation of pseudowire boxes requires tens of thousands of dollars of labor and equipment per cell site, and can proceed only after the successful implementation of complicated IT and other back office work (projected to cost tens of millions of dollars). Even assuming that the capital resources necessary to accomplish these up-front activities are available, and even where the payback rubrics are favorable, conversion to Clearwire-provided backhaul will take years to achieve.

Third, microwave backhaul is not suitable for all circumstances – it is not and will not ever be a complete substitute for wireline backhaul. There are numerous situations in which microwave backhaul is not economically attractive or topologically feasible – for example, where there are line of sight limitations; where microwave’s limited range is problematic; where traffic volumes are too low to justify deployment of microwave facilities; or where zoning/right of way issues result in unacceptable costs or delays. A Verizon Wireless executive recently acknowledged that wireless backhaul is not a perfect substitute for traditional backhaul facilities, stating that “if you have to use wireless microwave to get there [*i.e.*, as backhaul], do it, but do it in the most expeditious manner because that’s the most unstable part of your entire system. That’s what causes the problems and that’s what limits your bandwidth as well.”¹¹

In short, while microwave backhaul technology shows promise, it will never be a complete replacement for wireline TDM backhaul. Thus, Sprint will continue to rely extremely heavily on DS1 and DS3 facilities provided by incumbent LECs for many years to come.

B. Sprint’s Wireline Network for Enterprise Customers

In addition to the special access backhaul facilities used to connect its cell sites to the Sprint Internet backbone, Sprint also purchases vast quantities of special access facilities to provide broadband services to its wireline enterprise customers. The network

¹¹ Tom Swanobori, VP of Network and Technology Strategy, Verizon Wireless, at FCC Workshop on Wireless Broadband Deployment – General (August 12, 2009), Transcript at 48, *available at*: <http://www.broadband.gov/docs/ws_03_deploy_wireless_transcript.pdf>.

configuration for handling wireline enterprise traffic is, not surprisingly, very similar to that for handling wireless traffic, except that instead of a cell site, the starting point is an enterprise customer's premises (see diagram included in Attachment 3).

As with wireless, Sprint relies heavily on wireline TDM facilities obtained almost exclusively from the incumbent LEC to provide broadband services to its enterprise customers. Typically, Sprint obtains a DS1 channel termination from the customer's premises to the incumbent LEC serving wire center, and DS1 channel mileage facilities from the incumbent LEC serving wire center to an incumbent LEC aggregation point (a hub).¹² DS1s from many other of the incumbent LEC's serving wire centers, serving other customers' premises, also feed into the hub. The traffic from these multiple serving wire centers is multiplexed at the aggregation point, and transported from the aggregation point over a DS3 to a site (a LEC central office, for example) on a fiber ring. Once on the ring, the traffic is transported from the LEC central office to a Sprint long distance POP.¹³ From the Sprint POP, the traffic is carried over Sprint's long distance network, aggregated yet again with traffic from other Sprint POPs at a Sprint switch, and delivered from the switch to Sprint's Internet backbone via very high capacity (OCn) facilities.

¹² In circumstances in which the incumbent LEC does not have existing or sufficient facilities at a particular customer location, it will often assess one-time "special construction" fees (which can be thousands of dollars) in addition to the standard charges associated with a special access facility.

¹³ As described above, the fiber ring (in some cases self-provisioned by Sprint) connects multiple sites, potentially including incumbent LEC offices, Sprint long distance POPs, Sprint wireless MSCs, enterprise customers' sites, and the facilities of other wireless and wireline carriers.

Sprint expects that the majority of its enterprise customers who currently are served by special access DS1 or DS3 facilities will continue to use such facilities for the foreseeable future. The bandwidth and performance characteristics of TDM facilities currently in use are satisfactory for the type of broadband applications commonly used by many enterprise customers – credit card transactions, inventory control activities, electronic mail and browsing the Internet.¹⁴ On average, Sprint's enterprise customers have slightly more than one DS1 per site. As with backhaul channel terminations from a cell site, it is rarely economic for Sprint to self-provision or to obtain access facilities from an alternative (non-incumbent LEC) vendor at sites with DS1- or DS3-level demand requirements.

While Sprint has been exploring the use of Ethernet facilities (which can provide greater reliability than traditional TDM circuits, and may be more efficient than TDM for high bandwidth needs) to provide service to its wireline enterprise customers (especially those with high bandwidth needs), thus far it has purchased Ethernet facilities from Verizon or AT&T for only a handful of customers. AT&T's and Verizon's general unwillingness to offer Ethernet services at rates that Sprint – one of the largest purchasers of backhaul facilities in the nation – considers reasonable hardly supports the notion that this business is vigorously competitive and subject to fierce pricing pressures. This situation is disappointingly ironic in view of the fact that the Commission deregulated the

¹⁴ Many businesses discourage non-work related, very high bandwidth applications (for example, the downloading and viewing of movies) by their employees. Thus, except perhaps at large headquarter locations, individual enterprise locations generally tend not to need 100 mbps of backhaul capacity.

provision of Ethernet service by Verizon, AT&T, and other incumbent LECs on the assumption that such services were already competitive.¹⁵

III. PUBLIC NOTICE QUESTION 2 – AVAILABILITY AND PRICING OF SECOND MILE AND MIDDLE MILE CONNECTIVITY

The availability and pricing of the local transmission links that Sprint requires to serve its wireless and enterprise wireline customers are critical and substantial factors affecting the provision of its wireless and wireline broadband services. As the Commission has recognized, affordable access facilities are “a necessary precursor to a provider’s being able to deploy broadband services to its customers.”¹⁶ This is certainly true for Sprint: approximately one-third of Sprint’s total cell site operating costs are attributable to expenses for the links needed to connect its base stations to the rest of its network.¹⁷

¹⁵ See, e.g., *Petition of AT&T Inc. for Forbearance Under 47 U.S.C. § 160(c) from Title II and Computer Inquiry Rules with Respect to Its Broadband Services*; *Petition of BellSouth Corporation for Forbearance Under 47 U.S.C. § 160(c) from Title II and Computer Inquiry Rules with Respect to Its Broadband Services*, Memorandum Opinion and Order, 22 FCC Rcd 18705, ¶ 23 (2007) (“there are many significant providers of . . . Ethernet-based services,” and “competitors either are providing, or readily could enter the market to provide, these services”). Grant of forbearance to AT&T for its provision of Ethernet and certain other broadband services followed the same relief granted to Verizon in 2006 on a “deemed granted” basis (no order released).

¹⁶ Acting FCC Chairman Michael Copps, *Bringing Broadband to Rural America: Report on a Rural Broadband Strategy*, GN Docket No. 09-29, ¶ 114 (May 22, 2009; rel. May 27, 2009), available at: <http://hraunfoss.fcc.gov/edocs_public/attachmatch/DOC-291012A1.pdf>.

¹⁷ See Peter Bluhm with Dr. Robert Loube, National Regulatory Research Institute, *Competitive Issues in Special Access Markets*, Revised Ed., at 31 (first issued Jan. 21, 2009, and commissioned by the National Association of Regulatory Utility Commissioners) (“NRRI Report” or “NRRI”), available at: <http://nrri.org/pubs/telecommunications/NRRI_spcl_access_mkts_jan09-02.pdf> (citing TR Daily,

The absence of realistic alternatives to the incumbent LECs for cell site transmission links, combined with inadequate regulatory oversight of the incumbents' special access service terms and conditions,¹⁸ has led to substantially inflated prices as well as other unreasonable terms for these essential inputs to broadband services. Consequently, Sprint has spent billions of dollars in special access charges filling the coffers of the incumbent LECs – in particular, AT&T and Verizon – that could have been invested into Sprint's own broadband network and services. Moreover, consumers have less – and less affordable – access to broadband than they would if the Commission had implemented long-needed special access reform measures.¹⁹

Incumbent LEC-provided special access is often the only source of backhaul facilities, especially for second mile connectivity.²⁰ Furthermore, because wireless carriers such as Sprint are prohibited from purchasing unbundled network elements

December 4, 2008, reporting a speech by Sprint CEO Dan Hesse at the Practising Law Institute's Annual Institute on Telecommunications Policy & Regulation in Washington, DC); Declaration of Gary B. Lindsey, Attachment 1 to Comments of Sprint Nextel Corporation, WC Docket No. 05-25, ¶ 7 (Aug. 8, 2007) (2007 Lindsey Decl.).

¹⁸ The Commission's Phase II pricing flexibility rules give incumbent LECs a great deal of latitude in setting special access prices in areas where they have received such relief. The result has been supra-competitive prices and anti-competitive practices that have limited consumer choice by thwarting innovation and investment and by discouraging alternative providers from offering new products and services or expanding the scope of existing offerings.

¹⁹ See letter from Chris Murray, Senior Counsel, Consumers Union, to the Honorable John Dingell, Chairman, Committee on Energy and Commerce, United States House of Representatives, at 1 (Oct. 1, 2007), Exhibit A to "Special Access Pricing," a white paper attached to letter from A. Richard Metzger, Jr., *et al.*, counsel to Sprint, to Marlene H. Dortch, FCC Secretary, WC Docket No. 05-25 (Oct. 5, 2007) ("*Special Access Pricing Paper*").

²⁰ See section V, *infra*.

(UNEs), Sprint often has no choice but to rely on incumbent LEC-provided special access and to pay the high rates the incumbent LECs are able to extract from their captive customers.

A. Second Mile and Middle Mile Connectivity Prices

The cost of second mile and middle mile transmission links varies depending on several factors, including the type of facility used, the geographic location of the facility, the provider of the facility, and the availability of discounts. The chart below illustrates the range of 2007 average unit prices (by circuit type) that the Regional Bell Operating companies (RBOCs) tariffed for channel terminations and interoffice transport in the top 50 MSAs.

2007 RBOC Average Unit Price Ranges by Circuit Type in Top 50 MSAs²¹
(\$/month)

Circuit Type	High* (rack rate)	Low* (rack rate)	High* (With Discount)	Low* (With Discount)
DS1 Channel Term. ²² (Wireline)	204	140	172	96
DS1 Dedicated Transport Fixed (Wireline)	100	66	77	23
DS1 Dedicated Transport Variable (Wireline) (per mile)	28	16	13	7
DS1 Channel Term (Wireless)	329	139	176	91
DS1 Dedicated Transport Fixed (Wireless)	111	40	78	25
DS1 Dedicated Transport ²³ Variable (Wireless) (per mile)	35	10	18	7
DS3 Channel Term. (Wireline)	3,600	1,233	1,742	276
DS3 Dedicated Transport Fixed (Wireline)	1,450	448	693	261
DS3 Dedicated Transport Variable (Wireline) (per mile)	235	24	100	21

*Data based on actual prices.

²¹ The table reflects the data available at the time the table was compiled. In addition, the discount rates reflect generally available discounts.

²² Incumbent LEC channel termination rates do not vary by length of circuit.

²³ Transport purchased from incumbent LECs as "channel mileage" is priced on a per-mile basis. Therefore, the price per circuit varies depending on the length of the circuit.

B. Variations in Pricing by Vendor

Meaningful comparisons of prices of dedicated service offerings between incumbent LECs and competitors across a large geographic area are generally not possible. Incumbent LECs typically offer special access services at generally available rates throughout a region. Competitive LECs, by contrast, generally do not operate ubiquitous networks and tend to establish their rates on a route-specific basis. Consequently, customers seeking to compare the offerings of an incumbent and competitive LEC must do so on a route-specific basis.

C. Variations in Pricing by Regulatory Category

The prices for special access services that remain under price caps generally are no higher than, and often are lower than, the prices for comparable services for which the Bell Operating Companies (BOCs) have obtained Phase II pricing flexibility.²⁴ This apparent anomaly simply reinforces the conclusion that special access offerings in Phase II areas are not subject to effective competition.

Moreover, the same second and middle mile connections that the incumbent LECs offer as special access are much less expensive when they are acquired as UNEs. In 2007, for example, Sprint Nextel compared special access rates²⁵ in a sample of AT&T

²⁴ See Comments of Sprint Nextel Corporation, WC Docket No. 05-25, at 17-18 and Exhibit 1 (Aug. 8, 2007) (Sprint 2007 Special Access Comments).

²⁵ The special access rates examined by Sprint Nextel were those offered by the BOCs in exchange for a five-year term commitment, which generally reflect the most generous discounts.

and Verizon states with the prices for comparable UNEs. The analysis revealed that special access prices exceeded the prices for comparable UNEs by up to 150 percent.²⁶

For example, Sprint examined special access and UNE rates in five states in AT&T's region: California, Michigan, Ohio, Texas and Wisconsin. This analysis showed that prices for ten-mile DS1 special access circuits – consisting of two channel terminations and one ten-mile channel mileage circuit – were, on average, 150 percent higher than the prices for comparable UNE circuits.²⁷ In the same five states, special access prices for ten-mile DS3 circuits were, on average, 49 percent higher than the rates for comparable UNE circuits.²⁸

Sprint conducted a similar analysis of four states in Verizon's region: Maryland, Massachusetts, New York and Pennsylvania. This analysis showed that prices for ten-mile DS1 special access circuits were, on average, 58 percent higher than the prices for comparable UNE circuits.²⁹ In the same four states, prices for ten-mile DS3 special access circuits were, on average, 36 percent higher than the rates for comparable UNE circuits.³⁰ Similar analyses by other providers have also shown a vast disparity between

²⁶ As noted above, Sprint and other wireless carriers are not permitted to purchase UNEs and therefore have no alternative but to pay the incumbent LECs' special access rates.

²⁷ See Comparison of AT&T and Verizon Special Access Rates and Unbundled Network Element Rates, attached as Exhibit 3 to Sprint 2007 Special Access Comments.

²⁸ See *id.*

²⁹ See *id.*

³⁰ See *id.*

special access prices and UNE prices.³¹ These discrepancies between UNE rates – which reflect the prices one would reasonably expect carriers to charge in a competitive market³² – and the inflated rates that the BOCs charge for special access underscore how the lack of competition has allowed the BOCs to charge excessive prices for their special access services.

D. Incumbent LEC Discounts on Second Mile and Middle Mile Connectivity

The incumbent LECs offer discounts to customers that are willing to make certain term and volume commitments.³³ These discounts are a key feature of incumbent LEC pricing plans, but even the discounted rates are much higher than the prices one would expect to see in a competitive market.

³¹ See Comments of T-Mobile USA, Inc., WC Docket No. 04-313, at 21-22 and attached Declaration of Michael A. Williams at Appendix B (Oct. 4, 2004) (Williams Decl.) (showing that the prices incumbent LECs charged for special access DS1 channel termination services were approximately twice the prices, on average, for comparable UNE loops); Declaration of M. Joseph Stith, ¶ 2, attached to Comments of the Ad Hoc Telecommunications Users Committee, WC Docket No. 05-25 (June 13, 2005) (2005 Ad Hoc Comments) (showing that the BOCs' tariffed rates for a typical 10-mile special access circuit – including two channel terminations, a fixed mileage transport charge and a ten-mile channel mileage circuit – were, on average “significantly above their rates for equivalent UNEs,” in many cases “by well over 100%”).

³² The UNE prices were established pursuant to Commission pricing rules that are based on forward-looking costs and designed to produce rates that approximate those that a competitive market would produce. The UNE rates were established in contested proceedings – involving full discovery and cross examinations – in which the BOCs were active participants.

³³ For example, the basic tariff rate for a DS1 connection consisting of two channel terminations and ten miles of interoffice transport would cost \$984 per month for a total of \$59,040 over five years in the most competitive zone and state of the Ameritech region. That same connection would cost approximately \$332 per month for a total of \$19,920 over the five-year term, if the buyer agreed to a five-year term commitment. See Ameritech FCC Tariff No. 2, Section 7.5.9.

The range of discounts that incumbent LECs offer for special access services varies. Based on Sprint's experience, the National Regulatory Research Institute (NRRI) survey³⁴ provides reasonably accurate estimates for the discounts incumbent LECs offer on DS3 channel terminations and DS3 variable dedicated transport service, but may understate the discounts for DS3 fixed dedicated transport service.³⁵ Sprint's average discount in 2007 for DS3 fixed dedicated transport (wireline) was approximately 44 percent in the top 50 MSAs.³⁶ As explained below, however, in order to obtain the largest discounts offered by the incumbent LECs, purchasers of second and middle mile connectivity must submit to stringent conditions designed to deter customers from shifting demand to competitive alternatives.³⁷ Thus, the incumbent LECs use their discount plans to deter their special access customers from seeking alternative suppliers even in those areas where competing services are available.

IV. PUBLIC NOTICE QUESTION 4 – ECONOMICS OF DEPLOYMENT: COMPETITIVE ALTERNATIVES TO THE INCUMBENT LEC OFFERINGS ARE UNLIKELY TO EMERGE FOR THE SECOND AND MIDDLE MILE FACILITIES SPRINT NEEDS

There are significant economic barriers that have deterred competitive entry into the provision of local transmission services. In the *2005 Special Access NPRM*, the

³⁴ NRRI Report at 41.

³⁵ Sprint provided responses to the NRRI survey.

³⁶ *Compare* Public Notice at 4 (Question 2(c)) (citing a reported discount of 7 percent). The chart attached hereto as Attachment 4 summarizes some of the more salient features of DS1 and DS3 discount plans contained in the federal tariffs of several incumbent LECs, including AT&T, Verizon, Qwest, Embarq and FairPoint.

³⁷ *See* Section V.B.4, *infra*.

Commission observed that “[s]pecial access services have significant economies of scale and scope.”³⁸ Specifically, the bulk of the costs incurred to deploy a special access line are incurred in obtaining rights-of-way and access to buildings and in digging trenches or accessing poles or other conduits. Those costs substantially exceed the cost of the fiber strand or copper wire used to physically connect locations on a carrier’s network.³⁹ Incumbent LECs can “increase capacity on many special access routes at a relatively low incremental cost . . . by adding or upgrading terminating electronics.”⁴⁰

By contrast, new entrants seeking to provide special access services must incur substantial up-front costs which are sunk, *i.e.*, the costs are not recoverable if the entrant decides to abandon that area.⁴¹ Further, they often must endure lengthy delays before

³⁸ *Special Access Rates for Price Cap Local Exchange Carriers; AT&T Corp. Petition for Rulemaking to Reform Regulation of Incumbent Local Exchange Carrier Rates for Interstate Special Access Services*, Order and Notice of Proposed Rulemaking, 20 FCC Rcd 1994, ¶ 26 (2005) (*2005 Special Access NPRM*). As the FCC has noted, “[m]ost of the cost of providing a special access line is in the support structure, *i.e.*, the trenches, manholes, poles, and conduits, the rights-of-way, and the access to buildings, not in the fiber strand or copper wires that share the support structure, rights, and access.” *Id.*, citing AT&T Corp. Petition for Rulemaking to Reform Regulation of Incumbent Local Exchange Carrier Rates for Interstate Special Access Services, RM-10593 (Oct. 15, 2002) (*AT&T Petition for Rulemaking*); see also, *e.g.*, United States Government Accountability Office (“GAO”), Report to the Chairman, Committee on Government Reform, House of Representatives, *Telecommunications: FCC Needs to Improve its Ability to Monitor and Determine the Extent of Competition in Dedicated Access Services*, at 13 (Nov. 30, 2006), available at: <<http://www.gao.gov/new.items/d0780.pdf>> (“GAO Report”); *Unbundled Access to Network Elements*, Order on Remand, 20 FCC Rcd 2533, ¶¶ 150-153 (2005) (*UNE TRRO*) .

³⁹ *2005 Special Access NPRM* ¶ 26, citing *AT&T Petition for Rulemaking* at 29.

⁴⁰ *Id.*

⁴¹ See Comments of Time Warner Telecom, WC Docket No. 05-25, at 12-14 (June 13, 2005); Reply Comments of Nextel Communications, Inc., WC Docket No. 05-25, at 29 (July 29, 2005) (Redacted Version) (Nextel 2005 Reply Comments).

they can deploy new facilities.⁴² Thus, there is little chance of “hit-and-run” entry to discipline the incumbent LECs’ prices. As AT&T noted in its 2002 Petition for Rulemaking, “building alternative loop and transport facilities is, in most instances, fundamentally uneconomic.”⁴³ Moreover, as discussed below, the incumbent LECs have engaged in a variety of anticompetitive practices designed to discourage customers from seeking alternative providers.⁴⁴

Sprint has almost 200,000 cell site and wireline enterprise customer locations at which incumbent LEC-provided special access (primarily DS1) is the most (sometimes only) economically feasible means of obtaining the needed transmission service. The traffic volumes from these sites are too low to justify building out new facilities or switching to existing alternative backhaul facilities, given deployment costs, capital constraints, the substantial expense of migrating from existing to new facilities, and volume and term commitments which effectively lock Sprint in to incumbent LEC arrangements (discussed in Section V.B.4 below).

As discussed in Section II above, Sprint has devoted, and continues to devote, enormous resources towards optimizing its network, aggressively self-provisioning network elements in order to minimize costs, reduce its reliance upon vendors whose affiliates are among its largest competitors, and maximize control over the quality of

⁴² See, e.g., *AT&T Petition for Rulemaking* at 31.

⁴³ *Id.* at 25; see also *id.* at 28-32 (discussing barriers competitors face in deploying new loop and transport facilities).

⁴⁴ See section V.B.4, *infra*.

service. Even with these aggressive measures, it is not feasible or rational for a national carrier such as Sprint to deploy a fully self-provisioned ubiquitous network.⁴⁵

The Commission appears to recognize the financial challenges associated with deploying alternative backhaul facilities, as evidenced by its request for information on the categories of capital and operating expenses of constructing second mile and/or middle mile transport.⁴⁶ This concern is well-placed, as such expenses can be significant, especially if the transport facility is newly deployed (as opposed to an extension off a core network that has been heavily subsidized for decades by Universal Service support and generous cost-plus rate of return regulation, and for which near-ubiquitous rights-of-way have previously been granted). Alternative providers seeking to deploy new backhaul facilities might incur the following types of costs, depending on the type of facilities being deployed:

Capital expenses

- Cost of capital (debt and equity)
- Rights-of-way

⁴⁵ Even AT&T and Verizon – which together accounted for over 83 percent of total incumbent LEC special access revenues; which own the two largest interexchange carriers in the country; and which own the two largest wireless carriers (collectively, 170.6 million subscribers) – do not self-provision all of the backhaul for their own wireless affiliates and for their interexchange enterprise customers. Indeed, it is not clear whether Verizon or AT&T have deployed any backhaul facilities outside their respective incumbent LEC service territories. (Special access revenue calculations based on 2007 ARMIS report 43-01; wireless customer data as of third quarter 2009. *See Verizon Wireless and FIOS Growth Fuel Continued Strong Cash Flow at Verizon in Third Quarter*, Verizon news release dated October 26, 2009, reporting 89 million wireless subscribers; *Record Wireless Gains, Double-Digit Growth in IP-Based Revenues, Strong Cash Flow Highlight AT&T's Third Quarter Results*, AT&T news release dated October 22, 2009, reporting 81.6 million wireless subscribers).

⁴⁶ *See* Public Notice, Question 4(c).

- Site development expenses (leasing, zoning, survey costs)
- Trenching labor and equipment (for fiber deployment)
- Electronics to “light” fiber
- Requisite hardware (*e.g.*, radios, antenna, racks, Ethernet switches) for microwave backhaul deployment
- Power plant.

Operating expenses

- Rent and other fees to landlord (*e.g.*, the tower owner)
- Utilities
- Maintenance
- Depreciation
- Equipment testing and turn-up costs
- Potential termination liabilities and shortfall penalties to the existing access vendor
- Transport from microwave aggregation site to MSC.

These capital and operating expenses can be extremely costly,⁴⁷ and must be measured against potential revenue flows. If the carrier does not anticipate that a project will meet target internal rates of return and payback periods, the project is unlikely to be approved. Thus, at low volume sites (where potential revenues are low), or in areas where deployment costs are very high (*e.g.*, where the terrain is rough), the business case for deployment is difficult to make, and alternative backhaul is rarely deployed.

Perhaps recognizing the high hurdle of justifying backhaul deployment in low traffic volume situations, the Commission has asked whether “some government subsidy

⁴⁷ Prior to consummation of its deal with Clearwire, Sprint deployed some backhaul facilities at a few sites that had very high volume (minimum 50 mbps) capacity requirements. The capital expenses associated with such deployment were as high as \$100,000 per site.

or action is necessary to facilitate construction of second and middle mile facilities.”⁴⁸

Sprint cautions strongly against relying upon government subsidies to “solve” the problem of uncompetitive special access (in particular, second mile) prices, terms and conditions. While targeted government grants or loans might be useful for introducing a competitive offering on a very limited basis (that is, for a small number of otherwise self-sustaining individual projects, as are being considered under the Broadband Technology Opportunities Program), the incumbent LECs’ presence is so entrenched that it is unrealistic to expect the government to undertake a subsidy program vast enough to generate widespread deployment of competitive second or middle mile facilities.

The viability of the existing federal Universal Service Fund (USF) is already in considerable doubt,⁴⁹ and the addition of potentially billions of dollars in additional subsidies would assuredly send it tumbling over the edge. Moreover, the USF’s existing contribution and distribution mechanisms are wholly inappropriate for supporting second/middle mile facilities or broadband services in general. It would be a serious mistake to adopt a system of providing government subsidies to service providers for projects which may not be economically rational, and which impose huge financial burdens on other carriers for an indefinite period.

This is certainly not to say that government action is unnecessary or futile. To the contrary, where market forces are inadequate at controlling abusive or anticompetitive

⁴⁸ Public Notice, Question 4(g).

⁴⁹ The USF contribution factor for the first quarter of 2010 may jump to an all-time high of approximately 14.2%. See Stifel Nicolaus, *Industry Assessments Expected to Jump, Up Pressure for USF/Intercarrier Reform* (Nov. 3, 2009).

activities by dominant carriers (a situation which, in Sprint's view, clearly exists in the provision of special access facilities by incumbent LECs), the Commission has the authority and obligation under Title II and specifically under Sections 201(b) and 202(a) of the Communications Act of 1934, as amended, to act to ensure compliance with the statutory requirement that service be provided in a manner that is "just and reasonable" and that is not unjustly or unreasonably discriminatory. Thus, Commission action on two fronts is warranted.

First, the Commission should implement pricing reforms that will help bring interstate special access rates closer to just and reasonable levels. It should revise price cap rules, at a minimum, by re-introducing a productivity adjustment factor and bringing back under price cap regulation certain special access services that were prematurely deregulated. The Commission also should adopt new pricing flexibility triggers to help ensure that such flexibility is granted only where actual and viable competition exists.

Second, the Commission should prohibit anti-competitive terms and conditions which impose unreasonable penalties on customers who wish to allocate a portion of their business to a competitive service provider. Such action would help foster the development of competition in the provision of special access services by creating an environment in which customers are more easily able to switch from an incumbent to competitive access vendor.

V. PUBLIC NOTICE QUESTION 5 – NATURE OF COMPETITION AND AVAILABILITY OF ALTERNATIVES

A. Lack of Competitive Facilities

There are very few routes with competitive alternatives to the incumbent LECs for DS1 or DS3 second mile and middle mile access. Sprint seeks alternatives to the incumbent LECs' special access services whenever possible.⁵⁰ Despite Sprint's commitment to using non-incumbent LEC facilities, Sprint remains dependent on the incumbent LECs for the overwhelming majority of its second, middle, and last mile needs for its wireless and wireline networks.⁵¹

As noted above, Sprint currently purchases 95 percent of the DS1 channel terminations needed to reach its cell sites from incumbent LECs.⁵² As with backhaul from cell sites, the overwhelming majority (approximately 96 percent) of Sprint's wireline customer DS1s in service in 2008 were obtained from incumbent LECs. Whether the customer site is in a rural or urban area appears to make very little difference in terms of reliance upon incumbent LEC facilities. Overall, for both its wireline and wireless businesses, Sprint relied on incumbent LECs' special access services for more

⁵⁰ Sprint prefers competitive choices "if for no other reason than that competition would put downward pressure" on the rates charged by the incumbent LECs. *See, e.g.*, 2007 Lindsey Decl. ¶ 7 (noting that reducing the rates that Sprint pays for backhaul to cost-based levels would result in significant savings).

⁵¹ *See supra* at Section II.A and note 6; Schieber Testimony at 5.

⁵² *See supra* at Section II.A and note 6; Schieber Testimony at 7.

than 96 percent of all DS1 and DS3 last mile and second mile customer terminating circuits (including circuits terminating at cell sites) in the top 50 MSAs in 2006.⁵³

Sprint's dependence on the incumbent LECs exists despite its continuing efforts to obtain second mile services from alternative providers. In January 2007, for example, Sprint asked 77 competitive providers whether they had facilities located at any of over 52,000 Sprint cell sites. The results showed only a *de minimis* presence of competitive providers at Sprint cell sites. Sixteen of the respondents reported that they had fiber facilities located at one or more of the cell sites. But those facilities combined reached only a little over 1 percent of the cell sites included in the questionnaire.⁵⁴ As these results make clear, there are virtually no competitive alternatives to incumbent LEC special access services for these essential second mile connections.⁵⁵

⁵³ For purposes of this analysis, services obtained from MCI and legacy AT&T are treated as incumbent LECs in the Verizon and AT&T regions, respectively.

⁵⁴ Sprint 2007 Special Access Comments at 31-32; 2007 Lindsey Decl. ¶ 5. Even in those rare instances where a competitive provider has a presence at one of Sprint's cell sites, that does not necessarily make the competitive provider a viable alternative to the incumbent LEC. In most cases, the alternative provider does not have a large enough footprint to allow Sprint to rely on that provider's on-net facilities for second mile connections to its MSC. See Sprint 2007 Special Access Comments at 31-32; 2007 Lindsey Decl. ¶ 6.

⁵⁵ Sprint's experience is consistent with those of other providers, and with the Commission's own data. See, e.g., NRRI Report at 41 (noting that "Sprint's claims are generally consistent with the data we collected from Sprint and other buyers" of special access services); see *ex parte* presentation attached to letter from Anna M. Gomez, Sprint, to Marlene H. Dortch, FCC Secretary, at 3 (Aug. 22, 2007), citing FCC Universal Service Monitoring Report, Table 1.5 and Telecommunications Industry Revenue Report, Table 5 (2005 percentage adjusted to include pre-merger AT&T and pre-merger MCI in-territory revenue in the incumbent LEC percentage). According to the Commission's data, the incumbent LECs' share of the special access marketplace was over 94 percent in 2005. *Id.* See also AT&T Reply Comments, RM-10593, at 13 (Jan. 23, 2003); Declaration of Susan M. Gately, ¶ 16, attached to Comments of the Ad Hoc

Sprint's continuing inability to find significant alternative providers is consistent with NRRI's conclusion that incumbent LECs "have strong market power in most geographic areas, particularly for channel terminations."⁵⁶ NRRI found that incumbent LECs provide 99 percent of DS1 channel terminations, 98 percent of the DS1 transport market, and 91 percent of the market for DS3 channel terminations.⁵⁷ All of these services provide critical transmission connections needed to offer a variety of broadband services.

The Commission asks about the effect of different technologies on price competition.⁵⁸ In its effort to reduce its reliance on the incumbent LECs, Sprint has tried to use alternative technologies, where feasible, to replace traditional special access services. These technologies have limitations, however, which have prevented them from broadly supplanting traditional wireline special access services.⁵⁹ Therefore, these alternatives have not had a significant effect on incumbent LEC special access pricing.

Telecommunications Users Committee, WC Docket No. 05-25, (June 13, 2005) (incumbent LECs are the sole source of dedicated access at roughly 98 percent of all business premises nationwide); Comments of T-Mobile USA, Inc., WC Docket No. 05-25, at 6-7 (Aug. 8, 2007); Declaration of Don Eben, ¶ 4, Attachment 1 to Comments of ATX Communications, Inc., *et al.*, WC Docket No. 05-25 (Redacted Version) (Aug. 8, 2007) (stating that it is rarely economical to build last mile connections at DS0, DS1 or DS3 levels to individual customer premises).

⁵⁶ NRRI Report at iii, 79; *see also id.* at 47 ("Overall, the market concentration data portray special access as a dominant firm-competitive fringe market. In this kind of market, one firm, such as the ILEC, dominates, and other providers both individually and collectively have a small market share and little influence on price.").

⁵⁷ *See* NRRI Report at 45-46.

⁵⁸ Public Notice, Question 5(c).

⁵⁹ *See, e.g.*, Declaration of Ajay Govil, attached to Comments of XO Communications, LLC, *et al.*, WC Docket No. 05-25, ¶¶ 22-24 (Aug. 8, 2007) (cable

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One promising avenue is the potential use of television band White Spaces as a substitute for traditional fixed wireless services for second mile backhaul. If the FCC were to license White Space spectrum for fixed wireless service, White Spaces-based services could offer an alternative to incumbent LEC special access in certain circumstances, particularly in delivering broadband services to rural areas.⁶⁰

B. Barriers to Using Competitive Alternatives

Even in the few areas where competitive facilities exist, there are several factors that may prevent Sprint from availing itself of those alternatives and that immunize the incumbent LECs from any significant pressure that the presence of competitive facilities might otherwise place on the incumbents' prices. These factors include: the difficulties of connecting to competitive facilities that may be near, but do not reach, Sprint's base stations or end user premises; the impracticalities of using multiple vendors to provide last mile and second mile service for the same circuit; the effects of the incumbents' pricing policies; and the anticompetitive and exclusionary terms and conditions the incumbent LECs place on their customers.

1. Reaching Nearby Facilities

As explained above, alternatives to the incumbent LECs are rarely available at the locations where Sprint needs second mile access facilities. Even in MSAs where

companies do not offer wholesale access services to competitors and, even if these services were available, the cable companies cannot offer sufficient service level guarantees to support competitive services); *id.* ¶ 21 (fixed wireless is not a viable option); *see also* Section II.A, *supra*.

⁶⁰ *See* Comments of Sprint Nextel Corporation, GN Docket No. 09-51, at 24-25 (June 8, 2009).

competitors have fiber rings, those facilities may not be located near Sprint's cell sites and thus may not provide a meaningful alternative to the incumbent LEC's services that connect the cell site with the Sprint core network. Moreover, even at locations where a Sprint cell site is situated near a competitive fiber ring, it may not be feasible to connect Sprint's cell site directly to the competitive provider's ring. A threshold question is whether Sprint's cell site is near a node that provides access to the ring. Furthermore, Sprint would still have to determine whether it is cost-effective to connect its cell site to the node, either by having the competitive provider build a new DS1 link between the tower location and the node or, alternatively, by leasing DS1 service between the tower and the node from the incumbent LEC. These costs can be substantial even if the fiber ring passes close to a Sprint cell site.⁶¹

2. Vendor Splitting

To address maintenance and repair concerns, Sprint attempts to use a single carrier to provide the entire circuit (*e.g.*, both the channel termination and the channel mileage segments of a special access service) needed to connect a particular cell site to Sprint's MSC. Using a single provider facilitates the ability to resolve troubles on the circuit. When the competitive provider's services are cheaper than the incumbent LEC's for one part of a circuit (*e.g.*, interoffice transport), but the competitive provider cannot provide the entire, end-to-end service, Sprint must weigh the lower price it can obtain by

⁶¹ Declaration of Steven Sachs, Attachment 2 to Nextel 2005 Reply Comments, ¶ 9. Because the costs associated with the new construction needed to connect a cell site to a competitive carrier's ring are substantial, it is usually more cost-effective to use incumbent LEC special access to connect the cell site to the ring. *Id.*

using a competitive carrier for part of the circuit against the increased difficulties associated with resolving troubles on multiple-vendor circuits. If Sprint experienced a service outage or other problems on a circuit provided by more than one carrier, its reliance on multiple service providers for the circuit would complicate the troubleshooting and repair process. Because no single carrier would have responsibility for the entire connection, pinpointing and correcting a problem would take longer as the providers would need to coordinate testing and maintenance activities between themselves, as well as with Sprint.⁶²

3. Incumbent LEC Pricing Strategies Are Designed to Discourage Competitive Entry

As the Commission has recognized, the availability of dedicated connections between one pair of central offices cannot substitute for a circuit connecting another pair of central offices, and circuits provided out of one serving wire center cannot substitute for circuits provided out of another serving wire center.⁶³ Nonetheless, incumbent LECs tend to set uniform prices for their services throughout an MSA, rather than on a route-specific basis. Thus, the incumbent LECs' MSA-wide prices generally are unaffected by

⁶² *Id.* ¶ 7.

⁶³ *See, e.g.,* Regulatory Treatment of LEC Provision of Interexchange Services Originating in the LEC's Local Exchange Area; Policy and Rules Concerning the Interstate, Interexchange Marketplace, Second Report and Order in CC Docket No. 96-149; Third Report and Order in CC Docket No. 96-61, 12 FCC Rcd 15756, ¶ 65 n.176 (1997) (*LEC Classification Order*); *see also* *UNE TRRO* ¶¶ 78-79, 155-161. The Commission has concluded repeatedly that markets for exchange access services, such as special access, are "point-to-point" markets or markets of "discrete local areas." *Application of WorldCom, Inc. and MCI Communications Corporation for Transfer of Control*, Memorandum Opinion and Order, 13 FCC Rcd 18025, ¶ 166 (1998); *LEC Classification Order* ¶ 67.

the presence of competition on a small number of routes within an MSA.⁶⁴ Rather, incumbent LECs' pricing reflects the variety of competitive conditions that exist across different customer routes within a given MSA and allows the incumbent LECs to charge supra-competitive rates that are very close to monopoly rates, even where the incumbent is subject to competition on particular routes within the MSA.⁶⁵

For example, in areas where they have pricing flexibility, incumbent LECs can offset the impact of competitive entry along certain routes in an MSA by offering specialized contract tariffs that selectively target those customers that have ready access to alternative providers.⁶⁶ By dealing with these customers through targeted contract offerings, the incumbent LEC can exclude them from its uniform price calculation, allowing the LEC to charge the remaining customers within the MSA a price that is significantly higher than a competitive rate.⁶⁷

Incumbent LECs are also able to leverage their power over non-competitive services (*e.g.*, a DS1 channel termination) by requiring the customer to buy more competitive services (*e.g.*, higher-capacity channel mileage transport) from the incumbent LEC if the buyer wants to get the most advantageous price for the non-competitive

⁶⁴ See Sprint 2007 Special Access Comments at 13-14 and attached Declaration of Bridger M. Mitchell, ¶¶ 26-29 (Aug. 8, 2007) (Mitchell Decl.) (explaining that competition in one part of an MSA is unlikely to constrain incumbent LEC pricing in another part of the MSA).

⁶⁵ For example, if most of the DS1 purchases in an MSA involve routes where there is little competition, then the incumbent LEC's uniform price for DS1 links will be close to the monopoly price for those links. See Declaration of Bridger M. Mitchell and John R. Woodbury, filed as Attachment 1 to Nextel 2005 Reply Comments, ¶¶ 42-47.

⁶⁶ *Id.* ¶ 48.

⁶⁷ *Id.*

service. In doing so, the incumbent LECs are likely to set their prices at a level (a) lower than they otherwise might have charged for their least competitive service (*i.e.*, DS1 channel terminations) but (b) higher than they otherwise might have charged for the services where they face greater competition (channel mileage).⁶⁸ Similarly, the incumbent LECs are able to leverage their market power on routes where they are not subject to competition to win or retain business on routes where they are subject to competition.⁶⁹

In addition, the supra-competitive profit margins that incumbent LECs earn on non-competitive routes and services prevent the presence of competition on selected routes and services from disciplining incumbent LEC prices. The margins enjoyed by the incumbent LECs are more than high enough to offset the loss of a few customers, or circuits, to competitors who manage to undercut the incumbent LECs' prices on selected routes.⁷⁰

⁶⁸ See Mitchell Decl. ¶¶ 41-42. This strategy is particularly effective for customers, such as Sprint, that prefer to obtain both channel mileage and channel termination from a single vendor.

⁶⁹ The high sunk costs of special access prevent competitors from using "hit-and-run" entry to discipline the market power of a BOC to set supra-competitive prices. See section V.B.4, *infra*; see also William Baumol, John Panzar, and Robert Willig, *Contestable Markets and the Theory of Industry Structure*, Harcourt Brace Jovanovich, 1982, at 292.

⁷⁰ Michael L. Katz and Carl Shapiro, *Critical Loss: Let's Tell the Whole Story*, 17 Antitrust ABA 49, 50 (Spring 2003) (finding that "high margins also tend to imply that the actual loss is small, and thus a price increase might be profitable even when the critical loss [the customer loss required to make a price increase unprofitable] is small.").

4. Exclusionary Pricing Practices and Other Anti-Competitive Tactics Used by Incumbent LECs to Maintain Their Dominance⁷¹

Companies in various industries often provide services to customers under exclusive arrangements that “lock up” the demand of the purchaser for the supplier’s services and prohibit the customer from looking elsewhere for those services. In competitive marketplaces with multiple suppliers, such exclusive arrangements generally do not result in competitive harm.⁷² However, when a single supplier is dominant in the provision of an essential input service such as special access facilities, exclusive arrangements can be used to raise the cost of the supplier’s rivals to provide downstream competitive services and increase the dominant supplier’s power over the price of those downstream services.⁷³

Where a competitor in a particular line of business must obtain a substantial share of the existing market to achieve economies of scale, a company with market power need deter only a small fraction of its customers from switching providers to convince a

⁷¹ This subsection refers to Questions 2(c) and 5 of the Public Notice.

⁷² In competitive markets, customers can choose between different suppliers to satisfy their demand. Exclusionary or anti-competitive possibilities arise when there is only one firm capable of meeting each customer’s entire demand. In that situation, the dominant company can use exclusive arrangements to preclude incremental competitive entry. See *Anticompetitive Exclusion: Raising Rivals’ Costs to Achieve Power over Price*, T. Krattenmaker & S. Salop, 96 Yale L.J. 209; *LePage’s Inc. v. 3M*, 324 F.3d 141, 158 (2003) (citations omitted) (“[d]iscounts conditioned on exclusivity are ‘problematic’ ‘when the [supplier] is a dominant firm in a position to force manufacturers to make an all-or-nothing choice.’”).

⁷³ Exclusionary pricing schemes are particularly attractive to dominant firms, such as the incumbent LECs, because exclusionary pricing – unlike predatory pricing, for example – does not require the dominant provider to set prices below its own costs. Exclusionary pricing therefore can be virtually costless to the dominant company.

potential rival not to enter the market.⁷⁴ The key to successful exclusionary pricing is to condition more attractive pricing for input services that are not subject to competition on the selection of the dominant firm for the input services for which potential competitive entry is a realistic possibility. In other words, a customer must pay a higher price for the non-competitive services if it purchases the competitive services from another provider. AT&T and Verizon have adopted such exclusionary pricing strategies in their provision of special access⁷⁵ – they are able to dominate the provision of both channel terminations and channel mileage – because *no other supplier can satisfy the entire demand for those services in the AT&T and Verizon service territories*. AT&T and Verizon have used these advantages – advantages they achieved not through their superior business acumen but through their historical monopoly position prior to the passage of the 1996 Act – to discourage competitive entry.

In addition to these exclusionary practices, the most basic inducement for Sprint and other special access customers to agree to multi-year volume and term discount arrangements is to avoid the excessive month-to-month tariffed rates (or “rack” rates) for essential DS1 and DS3 transmission links. For example, Sprint recently had to decide whether to renew a five-year agreement with AT&T for wireless DS1 circuits. Because there were no alternate vendors that could meet Sprint’s requirements, Sprint either had to agree to renew the agreement or begin to purchase the circuits on a non-discounted,

⁷⁴ Less than full requirements contracts can be exclusionary if they tie up sufficient volume to prevent smaller competitors from achieving minimum viable scale.

⁷⁵ See, e.g., Comments of Time Warner Telecom and One Communications, WC Docket No. 05-25, at 36-42 (Aug. 8, 2007); Comments of COMPTTEL, WC Docket No. 05-25, at 9-15; Sprint 2007 Special Access Comments at 24-29.

month-to-month basis, which would have raised Sprint's costs by 184 percent – a rate differential that clearly is not based on the actual cost of providing service. Sprint reluctantly entered into another term commitment to avoid the enormous cost increase.

To entrench their dominant position, some incumbent LECs also have made discounts from month-to-month rates contingent upon accepting terms and conditions which effectively prevent the service subscriber from switching even a portion of its demand to an alternative access vendor in the limited locations in which such alternatives are available. In Sprint's experience, the BOCs, especially AT&T and Verizon, have relied upon five particularly onerous categories of terms and conditions to lock in subscribers and forestall competitive inroads:

- Commitment levels set at up to 100 percent of current demand levels;
- Shortfall penalties if actual demand falls below specified levels;
- Overage penalties if actual demand exceeds specified levels;
- Termination liabilities for exiting the plan prior to the scheduled expiration date; and
- Onerous circuit migration charges and restrictions.

Portability commitment levels: Both AT&T and Verizon condition the availability of discounted rates on term commitments, and link portability benefits (that is, termination liability waivers) to certain volume commitments. For example, the Southwestern Bell, Pacific Bell and Nevada Bell DS1 term plans set the portability commitment level at 100 percent of the channel terminations provided by the incumbent

LEC in the month prior to the commitment; Ameritech sets the commitment level at 90 percent of the in-service count.⁷⁶

Verizon similarly has portability commitment levels between 85-100 percent, depending upon the plan and the service, and in addition, conditions certain of its discounts upon the in-service count for each rate element.⁷⁷ The individual rate element condition is especially problematic: while a carrier might find it economic to build some of its own interoffice transport facilities, it is sharply discouraged from doing so because the discount on low volume channel terminations (which are rarely economic to self-provision) is tied to purchase of interoffice transport from Verizon. These conditions leverage the carrier's dominance in the provision of channel terminations into greater control of the interoffice transport business, where competition is marginally more feasible. Thus, this tariff requirement clearly undermines the Commission's goal of encouraging facilities-based competition. These penalties may even penalize customers that *do* buy the vast majority of their services from the BOC. For example, AT&T includes all DS1 month-to-month channel terminations in calculating a customer's initial volume commitment, but does not include month-to-month channel terminations (those

⁷⁶ See SBC FCC Tariff No. 73, Section 7.2.22; Pacific Bell FCC Tariff No. 1, Section 7.4.18; Nevada Bell FCC Tariff No. 1, Section 7.11.5.2; Ameritech FCC Tariff No. 2, Section 7.4.13.

⁷⁷ See, e.g., Verizon FCC Tariff No. 1, Section 25.3.1 (National Discount Plan has 85-90 percent commitment level for each rate element); Verizon-West FCC Tariff No. 14, Section 5.6.14 (90 percent of in-service count); Verizon-East FCC Tariff No. 1, Section 7.2.13 (100 percent of in-service DS0s); Verizon-East FCC Tariff Nos. 1 and 11, Section 25.1 (90 percent of in-service DS1s and DS3s).

that are not on a term plan) in the monthly review to determine whether the customer is meeting its volume commitment.⁷⁸

Although described as discounts by AT&T and Verizon, volume-based pricing practices are more accurately described as penalties that punish customers that do not buy the vast majority of their services from the BOC. Because AT&T's and Verizon's baseline rates are well above competitive levels, the discounts off their rack rates do not generate genuine "savings" compared to the rates that would be available to customers in a competitive market. Moreover, the BOCs' "discounts" do not appear to be based in any way on their own cost structure (*i.e.*, the savings the BOCs realize by providing services in bulk). The volume "discount" is based on the subscriber's commitment rather than the size of its total demand.⁷⁹ Thus, such a discount plan appears to be driven more by the BOCs' desire to limit customers' purchases from competing providers than by the savings involved in serving larger volume customers.

AT&T and Verizon also restrain competition by linking the discounts to historical demand levels of their purchasers. In geographic areas where the purchaser's level of output is decreasing, these limits can further restrain a purchaser's ability to seek competitive sources of access services. For example, assume that Purchaser X's discount for special access services was based on an historical annualized amount of \$100 million.

⁷⁸ See, *e.g.*, AT&T – West (Nevada Bell) FCC Tariff 1, Section 7.11.5.2; AT&T – West (Pacific Bell) FCC Tariff 1, Section 7.4.18.

⁷⁹ For example, an AT&T customer with \$10 million in total annual special access purchases would have to purchase \$9.5 million worth of those requirements (95 percent) in order to be eligible for the "volume" discount. Another AT&T customer, with \$100 million in annual purchases, would have to purchase \$95 million worth of services to obtain the same percentage discount.

Further assume that Purchaser X was eligible for the discount only if 90 percent or more of its special access needs were purchased from the incumbent. If X's sales decreased (possibly because it lost downstream retail customers to the BOC) and X only purchased \$90 million from the BOC, X could not purchase any access services from the BOC's competitors without losing the discount and becoming liable for contractual penalties.

AT&T had even tariffed a volume discount plan – the MVP Plan – which required the subscriber not only to make an annual revenue commitment based on its total recurring billing for all MVP-qualified access services (prior to any MVP discounts) for the previous three months, multiplied by 4; but also to demonstrate to AT&T that four percent of all services purchased under the plan were previously provided by a carrier other than AT&T or its affiliates.⁸⁰

Shortfall penalties: Subscribers face penalties if their actual special access purchases fall below the level specified in their volume discount plan. These penalties may deter a customer from shifting existing or future demand to other vendors, for fear of failing to meet its volume commitment to the BOC. While in theory, the application of shortfall penalties can be economically justifiable, many of the actual penalties imposed by the BOCs are so onerous as to be unreasonable. For example, under several AT&T FCC tariffs, the shortfall penalty for failing to meet a volume commitment far exceeds the price of purchasing an additional channel termination in order to meet the

⁸⁰ Ameritech FCC Tariff No. 2, Sections 22.20.3(C) and 22.20.5(A).

commitment.⁸¹ Consequently, customers that otherwise would fall below their volume commitment have an incentive to purchase “channel terminations to nowhere” simply to avoid paying the penalty. Verizon imposes similarly onerous shortfall penalties that encourage customers to purchase unnecessary circuits simply to avoid incurring penalties.⁸² In addition, certain incumbent LECs that have a multi-state operating territory (*e.g.*, Ameritech) compute commitment levels on a state-specific basis; an overage in one state cannot offset a shortfall in another state. The magnitude of shortfall penalties discourages competitive entry by deterring customers from self-provisioning or from subscribing to a competitive provider.⁸³

Overage penalties: AT&T actually imposes a substantial penalty when its volume plan customers’ demand exceeds minimum expected levels. For example, if a customer’s DS1 channel terminations exceed 150 percent of the commitment level (under the 5-year term plan), Ameritech charges the non-discounted month-to-month rate on all channel terminations above the commitment level (not, for example, on demand above

⁸¹ See, *e.g.*, AT&T – West (Nevada Bell) FCC Tariff 1, Section 7.11.5.2; AT&T – West (Pacific Bell) FCC Tariff 1, Section 7.4.18; AT&T – Southwest (Southwestern Bell) FCC Tariff 73, Section 7.2.20 (imposing a \$900 penalty per DS1 channel termination). See also AT&T – East (Southern New England Telephone) FCC Tariff 39, Section 2.11.1.1 (imposing a rate of \$574 per channel termination).

⁸² See Attachment 4. Verizon’s National Discount Plan does permit a downward adjustment in a volume commitment if the customer removes an Access Carrier Name Abbreviation due to the sale of one of the customer’s subsidiaries. Verizon does not permit a downward adjustment in the event of a business downturn or transferring service to a competitive provider, however. See Verizon (All Regions) FCC Tariff 1, Section 25.3.1.

⁸³ Reply Declaration of Joseph Farrell, attached to Reply Comments of CompTel, *et al.*, WC Docket No. 05-25 (July 29, 2005); GAO Report at 30.

the 150 percent maximum allowable level).⁸⁴ Southwestern Bell, Pacific Bell, Nevada Bell and Southern New England Telephone allow the subscriber to exceed the committed level by 24 percent; all DS1 channel terminations above that level are assessed the NRC (not even the applicable MRC).⁸⁵ The NRC for SWB, Nevada Bell and Pacific Bell is \$900; and the lowest NRC for SNET is \$574.

Termination liabilities: As with shortfall penalties, liability for early termination of a term plan may seem reasonable in theory, but the actual penalties assessed are excessive. For example, SWB, Pacific Bell, and Nevada Bell calculate early termination liability by multiplying the number of committed circuits by the undiscounted month-to-month rate by the number of months remaining in the term plan.⁸⁶ A more reasonable early termination liability would be based on the discounted rate times some factor that could vary depending upon the time the customer had actually participated in the plan. In any event, the threat of large termination penalties sharply reduces a customer's economic ability to move traffic off AT&T's network prior to the completion of the term, and thus reduces the ability of competition to constrain special access prices.

⁸⁴ See Ameritech FCC Tariff No. 2, Section 7.4.13.

⁸⁵ See SWB FCC Tariff No. 73, Section 7.2.22; Pacific Bell FCC Tariff No. 1, Section 7.4.18; Nevada Bell FCC Tariff No. 1, Section 7.11.5.2; and SNET FCC Tariff No. 39, Section 2.11.1.1.

⁸⁶ See SWB FCC Tariff No. 73, Section 7.2.22; Pacific Bell FCC Tariff No. 1, Section 7.4.18; and Nevada Bell FCC Tariff No. 1, Section 7.11.5.2.

Circuit migration charges and restrictions: The BOCs assess very high rates to perform a circuit migration – as high as \$1125 *per circuit*,⁸⁷ plus, in some cases, hourly overtime labor charges. These migration charges are assessed even if the move involves nothing more than a few keystrokes and a re-route of the circuit from one port in a central office to another port a few feet away in the very same office. Sprint rarely, if ever, migrates a circuit that requires trenching or other such time-consuming or labor-intensive truck rolls; in almost every circuit migration case, Sprint is simply switching the circuit from the BOC to a competitive LEC collocated in the BOC's central office, with no change to the customer termination point. In such circumstances, it is difficult to understand how a several hundred dollar move charge per circuit can be just and reasonable.

In evaluating an offer from an alternative access provider, Sprint must factor in the non-recurring move charges it will incur from the BOC to migrate the circuit from the BOC to the competitive LEC port. In some instances, the several hundred or thousand-plus dollar BOC migration fee can make the competitive LEC offer uneconomic. At a minimum, these fees extend the break-even period.⁸⁸ Thus, excessive move charges are

⁸⁷ See Attachment 4, citing BellSouth FCC Tariff No. 1, Sections 7.4.5(A) and (B) and Section 7.5.9.

⁸⁸ Consider, for example, the economics of switching a DS1 circuit. The average incumbent LEC rate for a DS1 is approximately \$390 per month. If a competitive access vendor offers Sprint an equivalent DS1 facility at 10 percent less than the incumbent LEC rate (a savings of approximately \$40 per month), but Sprint has to pay a \$500 migration charge to the incumbent LEC, the break-even point just to recoup the incumbent LEC migration charge is more than a year (\$500 divided by \$40 = 12.5 months).

an extremely effective means of discouraging a special access service subscriber from switching existing circuits from the BOC to an alternative access vendor.

The BOCs also impose restrictions on the number of circuits a customer may migrate. The AT&T LECs, for example, limit the number of circuits a customer may migrate to 10 per night, either four or five nights per week; the Verizon LECs limit the number of circuits to 5 per carrier account team center (CATC), 4 nights per week.⁸⁹ Taking into account weekends, holidays, and not-on-call days, a migration project involving a hundred circuits (again, a few keystrokes and an intra-office move) could thus take up to a month to accomplish because of incumbent LEC circuit migration restrictions.

It has also been Sprint's experience that incumbent LECs – whether by accident or design – can impede a project that involves migrating facilities (generally transport facilities rather than the tail circuits for which competitive alternatives are rarely available) from incumbent LEC networks through slow communication, insistence on correcting even minor discrepancies before the project can proceed, and refusal to work on a partial project unless every part of the project is ready to move forward. For example, in the spring of 2009, Sprint attempted to migrate 12 circuits in Florida. Some of these 12 circuits were scheduled to be disconnected, and AT&T has refused to proceed with the migration order – even for the circuits not scheduled for disconnection – until the disconnection has been completed. In another case, Sprint submitted a migration order in early October 2008, and had a Verizon-scheduled completion date of

⁸⁹ See Attachment 4.

December 31, 2008. Due to turnover, apparent inexperience, or other factors on the part of the Verizon project managers assigned to this project, this circuit migration remained uncompleted for several months after the target date.

To promote efficient competitive entry and expansion in the special access business, and thereby ensure that broadband deployment will not be adversely affected, the Commission should find that onerous terms and conditions that deter entry, such as those described above, are unjust and unreasonable, and thus may not be included in price cap LECs' special access offerings.

VI. CONCLUSION

Broadband is critical to the U.S. economy, and reasonable access to middle mile and second mile facilities is critical to the continuing deployment of broadband services. The incumbent LECs continue to face only minimal competition in the provision of second mile and middle mile facilities. As a result, the incumbent LECs are able to charge supra-competitive rates for their services and to impose anticompetitive terms and conditions on their customers, thereby delaying the expansion of broadband services. The Commission should act swiftly to promote broadband deployment by bringing the prices for essential second mile and middle mile facilities down to reasonable levels.

Respectfully submitted,

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